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Chad Haas, Grievant

## **JURISDICTION OF ARBITRATOR**

Article VIII, Employee Rights-Grievance Procedure, Section 8.4, Step 4 of the 2016-2017 Collective Bargaining Agreement (Joint Exhibit #1) between Benton County, Foley, Minnesota (hereinafter "Employer" or "County") and Law Enforcement Labor Services, Inc. (hereinafter "LELS" or "Union") provides for an appeal to arbitration of disputes that are properly processed through the grievance procedure.

The Arbitrator, Richard J. Miller, was selected by the Employer and Union (collectively referred to as the "Parties") from a panel submitted by the Minnesota Bureau of Mediation Services. A hearing in the matter convened on July 20 and August 6 and 7, 2018 in Foley, Minnesota. The hearing was tape recorded with the Arbitrator retaining the tapes for his personal records. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' counsel elected to file electronically post hearing briefs with receipt by the Arbitrator no later than September, 26, 2018. The post hearing briefs were submitted in accordance with that deadline date. The Arbitrator then exchanged the briefs electronically to the Parties' counsel on September 27, 2018, after which the record was considered closed.

The Parties agreed that the grievance is a decorous matter within the purview of the Arbitrator, and made no procedural or substantive arbitrability claims.

#### **ISSUE AS STIPULATED TO BY THE PARTIES**

Whether the termination of Chad Haas was for just cause?  
If not, what is the appropriate remedy?

#### **STATEMENT OF THE FACTS**

The Grievant, Chad Haas, began work as a County Deputy in 2007. Over the ensuing years he was recognized as a good and dependable Deputy. His work performance was consistently evaluated as meeting or exceeding expectations. The Grievant also received several commendations and acknowledgments for good performance. He was given special assignments such as SWAT and the Dive Team. (Union Exhibit #1).

The Grievant sought in 2012 an assignment to the Violent Offender Task Force ("VOTF"). The County Sheriff's Office participates in VOTF, which investigates crimes involving narcotics, prostitution, gangs, and other violent crimes. VOTF is made up of police officers and command staff (supervisors) from Stearns, Sherburne, Benton, Morrison, and Todd counties, as well as the cities of Sartell, St. Cloud and Little Falls.

The Grievant previously had some brief experience with a predecessor Task Force during field training and believed that given his anti-drugs stance this would be an interesting

assignment for him and that he would perform well in the position. The Grievant received the VOTF assignment beginning in 2013, reflecting the County's confidence in his abilities.

In retrospect, however, VOTF was not a good fit for the Grievant as he suffers from an attention deficit disorder ("ADHD"). The work of a County Deputy was at a slower pace in a structured environment consisting of close supervision by his supervisors. In that environment the Grievant was able to keep up with his work. After moving to the faster paced, less structured VOTF, which required the ability to work independently, the Grievant began to struggle and fall behind on his work.

Those afflicted with ADHD consider themselves fully capable of performing the necessary work. The Grievant described how he continued to believe that once he cleared certain work he would be able to address his backlog, but instead as work kept coming in, older work got put aside, then forgotten and the backlog increased. The Grievant stated that even as he fell behind on certain matters he continued to believe he would eventually catch up and get back on track.

Due to less structure, VOTF did not have the same oversight and same supervision in place to keep the Grievant on task. Adding to the Grievant's struggles was his desire to be recognized as a valuable and reliable member of VOTF since this

a special assignment. As a result, he found it difficult to turn down assignments and requests and in taking on additional work, the Grievant's deficit expanded. The Grievant's supervisors at VOTF seemed to recognize his tendency to take on too much work, but beyond occasionally "grounding him to his desk" to make sure he completed a task, they did not engage in any direct supervision to monitor his work. This created a vicious circle of assignments not being completed by the Grievant in a timely prescribed manner.

In July 2016, a St. Cloud Police Department ("SCPD") Property Room staff member spoke to SCPD Sergeant Lloyd Orth, a supervisor on the VOTF, concerning evidence related to a criminal case assigned to the Grievant. SCPD staff were attempting to ascertain the status of the case associated with certain items of evidence that had been in the property room to learn whether the evidence could be destroyed. SCPD staff were unable to find a police report associated with the case.

In looking into this matter, Sergeant Orth discovered that 43 of the 71 cases that had been assigned to the Grievant since the Grievant was assigned to the VOTF were missing required reports. A meeting was held between the Grievant and three supervisors on August 19, 2016 about these missing reports. At the time of the meeting, the Grievant was aware of the backlog (although he was unaware of the extent of the backlog) and was

working on those reports. When confronted with the information of 43 missing reports, the Grievant indicated that most of the missing reports were in various stages of completion and were stored on external storage devices. The Grievant was given a couple of weeks in which to complete the missing reports.

On August 22, 2016, the Grievant came to the office of Lieutenant Patterson and provided her with an electronic copy of the majority of the missing reports from the 43 delinquent cases. Upon examining the files provided by the Grievant, it was noted that all of them were stamped with created dates that ranged between August 19-21, 2016. This appeared to contradict the Grievant's assertion that these reports were previously initiated and stored on another storage device. It should be noted, however, as demonstrated by Union witness, Matt Rider, IT Technician, T.R. Computer Sales, White Bear Lake, Minnesota when one copies the contents of an existing document and pastes that into a new document (as the Grievant indicated), the properties of the new document will not show the original date of creation of the copied material, but the creation date for the new document. Thus, what appears to have raised supervision concerns would not have reflected any deceit by the Grievant that they were all created between August 19-21, 2016.

Lieutenant Patterson later met with the Grievant and asked him where he had located the reports that had been completed and

turned over to her. The Grievant told Lieutenant Patterson that he finalized most of the reports by copying material stored on the external devices, opening a new document on the County's computer software and pasting the copied material into the new document that were turned into Lieutenant Patterson on August 22, 2016. The Grievant then deleted the files on the hard drive. The Grievant testified that there were a few reports that he had not started which he did complete over that weekend, but most of the reports were largely complete and on the external storage devices.

Lieutenant Patterson directed the Grievant to provide this external hard drive to her. The Grievant did so and informed Lieutenant Patterson that the device was the device upon which the reports were previously located. A later forensic examination of this hard drive was done that revealed no such files ever existed on the external hard drive. In fact, the Grievant admitted that when he informed Lieutenant Patterson the device was the device upon which the reports were previously located, he knew that the hard drive never contained the report files. The Grievant stated that he had lost the external storage device that had contained these files and he did not want his supervisor to know of his carelessness.

After the 43 missing reports were brought to his attention, the Grievant brought several search warrants to Benton County

Court Administration for filing. Irregularities in these search warrants prompted Benton County Court Administration staff to contact Lieutenant Patterson regarding these irregularities. In reviewing these search warrant filings and their irregularities, it was discovered the Grievant had neglected to file 13 search warrants with the Court in a timely manner. Some of these search warrants were filed months or years after the execution of the warrant. While reviewing the search warrants filed by the Grievant outside of the normally proscribed 10-day time limit, it was discovered that he had filed the same search warrant on two separate occasions.

On September 29, 2014, the Grievant applied for and received authorization from Judge Michael Jesse to conduct a search at 701 Second Avenue North, Sauk Rapids, Minnesota. This search warrant was executed and filed with the Court on October 8, 2014. On September 27, 2016, the Grievant filed this warrant again with the Court. In examining these two documents, it was found that the page containing the Judge's signature on the first 2014 filing of the warrant was different than the page containing the Judge's signature on the second 2016 filing of this same warrant. An additional search warrant was located wherein the Judge's signature on the affidavit page and on the warrant page appeared to be exact copies of each other. Upon learning of this information, the matter was referred to the



Minnesota Bureau of Criminal Apprehension ("BCA") for the investigation of possible criminal charges for filing a forged document with the Court.

As a part of this criminal investigation, four of the questionable search warrants filed by the Grievant were sent to forensic document examiner Janis Tweedy, Co-Owner, Total Security Concepts, Inc., Mendota Heights, Minnesota. The examiner noted that the signatures on the search warrant for 701 Second Avenue North, Sauk Rapids, Minnesota, filed by the Grievant on October 4, 2014 contained original inked signatures. The examination revealed that the copy of this same search warrant filed by the Grievant on September 27, 2016 contained signatures made from toner rather than ink. Several other discrepancies in the documents indicated this second copy of the search warrant was generated through the use of a scanner or copying machine.

A search warrant obtained by the Grievant on September 5, 2014 to search an address at 258 Elm Drive, Foley, Minnesota was examined by the examiner. This search warrant was filed by the Grievant on September 27, 2016. The examiner found evidence that the two Judge's signatures on this search warrant were copies of the Judge's signature from the search warrant for 701 Second Avenue North, Sauk Rapids, Minnesota filed on October 4, 2014.

Thereafter, County Sheriff Troy Heck advised Lieutenant Patterson and County Chief Deputy Neal Jacobson that he requested that the BCA conduct a criminal investigation into the search warrants. Sheriff Heck's request was granted, and on October 4, 2016, the Grievant was interviewed by Donald Newhouse, BCA Senior Special Agent ("SSA"), Bemidji, Minnesota.

In his unrecorded interview with SSA Newhouse, the Grievant stated that certain events in his personal life may have contributed to his lack of being organized with respect to the search warrants and missing reports, including a recent divorce and having to move on several occasions. In addition, the Grievant advised SSA Newhouse that several factors leading up to him being behind on his paperwork, included his inability to say "no" when asked to help others and lack of organizational skills when it came to some of his paperwork or administrative duties.

According to SSA Newhouse, the Grievant stated in the interview that he did not copy or write the Judge's signatures on the search warrants in question. After being shown the similarities on these search warrants, the Grievant claimed not to have an explanation, and indicated he should probably seek the advice of an attorney before any further questioning of this subject matter, which is his legal right.

At the conclusion of the interview with SSA Newhouse, the Grievant was placed on paid administrative leave while the

allegations of criminal conduct while on duty for VOTF were being investigated.

On March 3, 2017, Assistant Anoka County Attorney Paul Young issued a declination letter for the criminal investigation conducted by the BCA. This was done to avoid any possible conflict of interest with any county or city attorney involved in VOTF. The letter reads as follows in relevant part:

Dear Special Agent Newhouse:

In October 2016, you received a request to conduct an investigation into the conduct of Benton County Deputy Chad Haas, the potential defendant. At all relevant times, Haas was assigned as an investigator with the Central Minnesota Violent Offender Task Force. As part of a "routine review" of the evidence related to Task Force cases, it was identified that multiple cases for which Haas was responsible did not have corresponding reports or other relevant documents appropriately completed. This appears to include search warrant returns which are months and/or years after the warrant(s) were executed.

The review demonstrated poor record keeping, at a minimum, by Haas and the Task Force. In particular, 2 different search warrants were identified which appeared to have "altered" signature pages. This was originally noted by Benton County District Court personnel. The questioned warrants were for a residence in Sauk Rapids and appeared to be signed by Judge Jesse on September 29th, 2014. This was questioned by court personnel due to the long delay between 2014 and fall 2016 and because what appeared to be the same, or similar warrants were returned in 2014. Haas returned 6 warrants on September 27th, 2016, in Benton County. In some fashion, the warrants, and/or signatures, may have been cut and pasted to reflect subsequent warrants at the same address as the first warrants.

Haas was interviewed, but the recording is not available. Haas acknowledged being behind in paperwork and having poor organizational skills. Haas also admitted being late in returning served warrants. Haas mentioned his personal

life and stated he kept paperwork in his vehicle or in "jumbled" stacks. When Haas was told in the fall of 2016 to complete his reports and/or paperwork, he claims to have found warrants which had not yet been filed with the court. Those warrants, claimed Haas, were "soiled" or damaged over the past 2 years. When confronted about the apparent copying or altering of the judicial signature on some of the warrants, Haas could not provide an explanation and stopped the interview.

A forensic document examiner was asked to analyze the questioned warrants and signatures. The examiner concludes that in multiple warrants, the judicial signatures are not the original signatures from the dates the warrants were originally approved in 2014. Rather, the signatures appear to be copied or cut and pasted from other documents. However, it does appear that the warrants, when originally presented for judicial approval, were signed by a district court judge (Judge Jesse). The issue becomes the fact that the warrants were not returned in a timely fashion, and may have been lost and or damaged by Haas, and Haas attempted to cure the delayed filing/return by repairing the damaged signatures before return in the fall of 2016.

Initially, it must be noted that this potential crime was created by a combination of poor investigative practices and skills, coupled with poor Task Force oversight or supervision of the work done by investigators. Additionally, whatever department policies or rules may have been violated by Haas in his performance or cooperation during the investigation will be left to the Benton County Sheriff. It is critical to this analysis that the original warrants from 2014 were, at the time originally presented for court approval of probable case, signed by a judge. Therefore, no unauthorized warrants were executed on citizens. Here, rather than with an intent to commit a crime, or defraud the court, Haas appears to have altered the damaged or missing judicial signatures from the already approved warrant to ensure his (Haas') ability to return/file the warrants with court - albeit 2 years, later. Haas exercised very poor judgment in attempts to correct very poor management of search warrants. But, the State cannot prove beyond a reasonable doubt that the conduct of Haas is criminal.

(Employer Exhibit #1, Tab 12).

On April 3, 2017, the Grievant was notified that the County was conducting an internal investigation regarding his missing reports and search warrants. The internal investigation was conducted by Chief Deputy Jacobson. Chief Deputy Jacobson reviewed a myriad of documents and interviewed several individuals, including the Grievant. His internal investigation was thorough and complete, and his report was lengthy.

During his internal investigation interview with Chief Deputy Jacobson, the Grievant stated that when he discovered that he had several search warrants which had not been filed in a timely manner, he worked to organize the paper work he had in order to file these documents. The Grievant stated that some of these documents were in his desk area while others were in a bin in his VOTF truck. The Grievant stated several of these documents had become stuck together or stained. The Grievant stated that he attempted to make these documents appear to be original by running them through a copying machine, manipulating the settings in order to remove the evidence of improper handling or printing new copies of the original document. The Grievant stated that he then used a copying machine to duplicate the Judge's signatures to make the documents appear to be original. The Grievant indicated he engaged in this activity to avoid looking like an idiot because he had a reputation of just not doing good work and it sucked.

The Grievant testified at the arbitration hearing that he admits his efforts in this regard were a mistake and he should have sought advice and assistance from his supervisors as to how best take care of the problem, but insists there was no intent to mislead as to the legitimacy of any warrant.

In addition, the internal investigation report establishes how the Grievant handled the 43 outstanding reports. In one case, the Grievant was assigned to deliver firearms seized in a search warrant and DNA samples from the suspect to the BCA crime lab. Even though he had assured his VOTF supervisors on multiple occasions that this task had been completed, it was learned that the firearms in question had not been transferred from the St. Cloud Police Property Room to the BCA and that the DNA sample from the suspect was lost.

The Grievant, in his internal investigation formal statement, attributes this to confusion on his part between this firearms case and another firearms case where he did transport guns to the Sherburne County Crime Lab. The Grievant confirmed that he obtained the DNA sample from the suspect and improperly stored this DNA sample in the VOTF office, rather than following policy and checking it into the evidence room.

Following the Grievant's placement on paid administrative leave, a review of his desk led to the discovery of several cell phones, some of which were tagged as evidence, in a binder under

his desk. Supervisors also discovered that eight cell phones listed as being seized from a residence on a search warrant were unaccounted for. During the search warrant that yielded these eight cell phones, the possession of this evidence was transferred last to the Grievant. In his internal investigation statement, the Grievant admitted to failing to follow proper evidence handling protocols "sometimes" and that it was "not uncommon" for him to store a phone held as evidence in his desk. An audit of the County Property Room found two cases in which the Grievant brought property into the evidence room, but failed to log it into the computer system.

On May 3, 2017, during the pending internal investigation, Benton County Attorney Philip K. Miller sent a letter to Sheriff Heck indicating the following in relevant part:

During the pendency of the criminal and internal investigations, we have felt obliged to plead out cases where Deputy Haas was involved, in a manner more favorable to the Defendant than we normally would. We recognized that we would have an obligation to divulge that an active investigation was underway and not only would those cases be put on hold and Defendant's likely released from custody, but the cases themselves would be jeopardized. Fortunately, we did not have a lot of cases where Deputy Haas would be deemed a crucial or necessary witness. We do still have a couple of cases with his involvement in the system where we may yet be forced to deal with. Clearly, the allegations that surfaced through VOTF have had a detrimental effect on our handling of all cases involving Deputy Haas.

The allegations against Deputy Haas have now been made known to the public in the St. Cloud Times article. Obviously the internal investigation is not yet complete.

I feel compelled to inform you that there is no way our office can put Deputy Haas on the witness stand. That would NOT prevent a defendant from calling him to the stand. Any case where he is called to testify would turn in to a proverbial circus about his alleged actions and failure to act in a professional manner as well as alleged violations of departmental and VOTF policies.

Going forward, my office will be obligated under Minnesota law, as well as our duty under the Rules of Professional Responsibility, to inform Defendants that Deputy Haas is Giglio- impaired. That means open notification that there is evidence that Deputy Haas' ability to be truthful is in question, in virtually all circumstances. This would apply not only for trials, but any contested hearing. This will have the negative effect of re-focusing the attention of the fact finder from guilt or admissibility of evidence, to Deputy Haas. His being a witness will significantly impinge out ability to successfully prosecute any case with which he is involved.

Please understand, that if Deputy Haas is re-instated, any new case that he is involved in will likely not be charged. Deputy Haas has ruined his professional credibility and the confidence of this office and the courts. As you know, proving a case 'beyond a reasonable doubt' is onerous, we have a difficult enough time getting jurors to focus on the facts we present. Having to overcome the additional burden of jurors understandably doubting anything Deputy Haas would have to offer, would be untenable and fatal to virtually any case. I cannot and will not put my attorneys in this position.

(Employer Exhibit #1, Tab 3).

The internal investigation report prepared by Chief Deputy Jacobson was completed before July 6, 2017. The internal investigation report states that the investigation substantiated misconduct on the Grievant's part and violation of multiple Sheriff's Office Policies and Central Minnesota Violent Offender Task Force Policies and Guidelines, including the following:



## **340 STANDARDS OF CONDUCT**

### **340.5 CAUSES FOR DISCIPLINE**

... possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient office service. The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct...

#### **340.5.7 EFFICIENCY**

b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

(c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.

#### **340.5.8 PERFORMANCE**

(b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any office record, public record, book, paper or document.

(c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any office-related business.

#### **340.5.9 CONDUCT**

(m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this office, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this office or its members.

### **344.1 PURPOSE AND SCOPE**

Report preparation is a major part of each employee's job. The purpose of reports is to document sufficient information to refresh the employee's memory and to provide sufficient information for follow-up investigation and successful prosecution. Report writing is the subject of substantial formalized and on-the-job training.

#### **344.1.1 REPORT PREPARATION**

Employees should ensure that their reports are sufficient for their purpose and reasonably free of errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty, unless permission to hold the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads, or arrest reports where the suspect remains in custody should not be held. Handwritten reports must be prepared legibly. If the report is not legible, the submitting employee will be required by the reviewing supervisor to promptly make corrections and resubmit the report. Employees who dictate reports shall use appropriate grammar, as content is not the responsibility of the typist. Employees who generate reports on computers are subject to all requirements of this policy. All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

### **344.3 GENERAL POLICY OF EXPEDITIOUS REPORTING**

In general, all employees and supervisors shall act with promptness and efficiency in the preparation and processing of all reports. An incomplete report, unorganized reports or reports delayed without supervisory approval are not acceptable. Reports shall be processed according to established priorities or according to special priority necessary under exceptional circumstances.

## **INVESTIGATION AND PROSECUTION**

### **600.1 PURPOSE AND SCOPE**

When assigned to a case for initial or follow-up investigation, deputies shall proceed with due diligence in evaluating and preparing the case for appropriate clearance or presentation to a prosecutor for filing criminal charges.

### **600.2 INITIAL INVESTIGATIONS**

A deputy responsible for an initial investigation shall complete no less than the following:

- (b) If information indicates a crime has occurred:
1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
  2. Determine if additional investigative resources (e.g., investigators or scene processing) assistance is necessary and request assistance as required.
  3. If assistance is warranted, or if the incident is not routine, notify a supervisor or Shift Sergeant.
  4. Interview all available victims, informants, complainants, witnesses and suspects.
  5. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
  6. Collect any evidence.
  7. Take any appropriate law enforcement action.
  8. Complete and submit the appropriate reports and documentation.

## **EVIDENCE ROOM**

### **802.3 PROPERTY HANDLING**

Any employee who first comes into possession of any property, shall retain such property in his/her possession until it is properly tagged and placed in the designated property locker or storage room. Care shall be taken to maintain the chain of custody for all evidence. Any property seized by a deputy with or without a warrant shall be safely kept for as long as necessary for the purpose of being produced as evidence (Minn. Stat. § 626.04 (a)). Seized property held as evidence shall be returned to its

rightful owner unless subject to lawful detention or ordered destroyed or otherwise disposed of by the court (Minn. Stat. § 626.04 (b) and Minn. Stat. § 629.361).

### **802.3.1 PROPERTY BOOKING PROCEDURE**

All property must be booked prior to the employee going off-duty. Employees booking property shall observe the following guidelines:

### **LAW ENFORCEMENT CODE OF ETHICS**

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against abuse or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or abuse and never accepting gratuities. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and

improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession ... law enforcement.

#### **CENTRAL MINNESOTA VIOLENT OFFENDER TASK FORCE POLICIES AND GUIDELINES**

b) Investigative Reports. Members will produce, clear, accurate reports of their investigative efforts. The reports will be timely and in a format prescribed by the Task Force Commander.

#### **IX. EXECUTION OF SEARCH WARRANTS**

C.) Officers should either write or dictate their reports as soon after the search is completed as possible.

#### **X. EVIDENCE: PROCESSING AND CHAIN OF CUSTODY**

B.) Collection. All evidence purchase or seized will be processed in the following manner:

1. The officer recovering evidence will be responsible for packaging and delivery to the St. Cloud Police Evidence Room or his/her jurisdictional evidence room. All evidence being delivered to the St. Cloud Police Department will be processed in accordance to the St. Cloud Police evidence handling policy.

#### **MULTIJURISDICTIONAL TASK FORCE VIOLENT CRIME ENFORCEMENT TEAM OPERATING PROCEDURES AND GUIDELINES**

Manual 3-03 Report Forms Investigators are responsible for the timely filing of all required reports, documents and other administrative and/or case work as required by law, the Commander or designee or as set forth in the policy manual.

(Employer Exhibit #1, Tab 1).

On July 6, 2017, Sheriff Heck informed the Grievant by letter that the internal investigation had been completed showing numerous violations of relevant policies and the

Grievant was being proposed for termination. A Loudermill Hearing was scheduled for July 18, 2017 to give the Grievant a final opportunity to present any additional pertinent factual information or any reasons why he should not be terminated. (Joint Exhibit #2).

On July 17, 2017, the Union informed Sheriff Heck that pursuant to legal counsel, the Grievant has decided to waive his appearance at the Loudermill Hearing and instead challenge his pending termination through the grievance and arbitration process contained in the Collective Bargaining Agreement. (Joint Exhibit #3).

Sheriff Heck notified the Grievant on July 18, 2017 that he was being terminated for allegedly failing to generate reports in a timely manner, failing to properly handle evidence, failing to file search warrants in a timely manner, falsifying documents by copying Judge's signatures onto search warrants filed with the Court, making untruthful statements to the BCA investigator during a criminal investigation, and knowingly providing false information to a superior. (Joint Exhibits #4, #5).

On July 20, 2017, the Union filed a written grievance challenging the Grievant's termination and seeking his reinstatement with back pay and restoration of any benefits. (Joint Exhibit #6). The County denied the grievance on July 24, 2017. (Joint Exhibit #7). The Union ultimately appealed the

grievance to final and binding arbitration pursuant to the last step in the contractual grievance procedure. (Joint Exhibit #8).

After the Grievant's discharge he was prescribed Wellbutrin for his ADHD condition and noticed improvement in his concentration. The Grievant testified that he has not continued with the ADHD treatment, in part because of the lapse in his insurance and because since his removal from the VOTF environment his life has calmed down and the symptoms are under control.

#### **UNION POSITION**

The Grievant's discharge stemmed from events which came to light in the summer 2016 and ultimately led to a criminal investigation against him; however no criminal charges were ever brought against the Grievant.

The Grievant's discharge was excessive and without just cause. A fundamental purpose behind discipline is to provide the employee with sufficient opportunity to improve their conduct before harsher discipline is imposed. The Grievant had been considered a good and valuable Deputy for the County and had no significant discipline issued against him during his tenure until the discharge. The Grievant had consistently received positive evaluations and been given significant assignments.

The Grievant's work performance issues began with his assignment to the VOTF. The Grievant applying for the VOTF, and being awarded the position, reflect the confidence that both he and the County had in his ability to perform that role. Unfortunately, neither party anticipated the struggles which the Grievant would face with the pace of the VOTF work and considering the more independent nature of VOTF work.

The Grievant's failures at VOTF are the result of the nature of his VOTF work. The Grievant recognized that his skills and abilities do not mesh with the demands of VOTF. Importantly, the Grievant does not seek reinstatement to VOTF, but to patrol duties as a Deputy with the County. The Grievant has a documented history of good service in that capacity and can be expected to continue to provide that service in the future.

#### **COUNTY POSITION**

The termination of the Grievant's employment is warranted based on the evidence in the record. The County has submitted undisputed proof that the Grievant engaged in the conduct for which he was terminated. Sheriff Heck terminated the Grievant only after very careful and thoughtful deliberations and a review and study of the thorough internal investigation.

The underpinnings of the criminal justice system rely upon the public having faith and confidence in those working in this



system. The credibility and reliability of licensed law enforcement officers who may be called upon to testify in court or other proceedings must be above reproach in order for the employee to be effective in their job duties.

The level of disregard for policy and procedure on such critical items of trust and transparency as evidence handling and proper completion of criminal investigation reports in this case is alarming. The Grievant's consistent and continuous disregard for these important tenants, in and of itself, would be just cause to impose upon him severe disciplinary action.

However, even more egregious than these violations is the Grievant's attempt to avoid the consequences of his actions through deception and subterfuge. When the Grievant's supervisors first came to him with the issue of the missing reports, he stood at a crossroads. He had the option to be truthful with his supervisors regarding the level of disorganization present in his work product. While doing so would have had consequences, this choice would have served to preserve what credibility he retained as a law enforcement officer and potential witness in court.

The Grievant instead chose to carry out steps designed to conceal his deficiencies. These steps were not a simple misquote or equivocal statement. The Grievant went to great lengths to produce documents for the court that he knew

contained copied and forged signatures. The Grievant knew when he turned over the external hard drive to his superior Lieutenant Patterson that this storage device never contained the reports he had failed to file in a timely manner. The Grievant knowingly made false statements to the BCA investigator when interviewed in the criminal investigation.

It is these choices that are the most egregious violations of policy and trust and the choices that have irreparably damaged the Grievant's credibility. He has engaged in conduct in violation of his obligation to be truthful and his obligation to conduct himself with integrity. The Sheriff's Office command staff, the County Attorney's Office and the County Judges can never trust the Grievant again based on the totality of his misconduct.

The conduct exhibited by the Grievant is contrary to the policies of the Office. It is also totally contrary to instilling public trust and confidence in the Office. The Grievant is now Giglio-impaired. It is these choices that led County Attorney Miller to conclude that the Grievant could no longer be considered a credible witness in criminal prosecutions.

It is apparent from the Grievant's testimony that he does not acknowledge his accountability for his conduct. He has not been repentant about his conduct or acknowledge that his conduct

detracts from the public's faith in law enforcement and tarnishes the badge and the County Sheriff's Office.

Based on the totality of the Grievant's misconduct, his termination is for just cause. There is no legitimate argument that the discharge of the Grievant was an abuse of County discretion. The County requests that the Arbitrator deny the grievance in its entirety.

#### **ANALYSIS OF THE EVIDENCE**

Article X, Discipline, Section 10.1 of the Collective Bargaining Agreement provides the following:

The Employer will discipline permanent employees for just cause only. Discipline will be in one or more of the following forms: (a) discharge (b) demotion (c) suspension (d) written reprimand (e) oral reprimand.

The above listing does not indicate any required step progression for disciplinary action. Cause is not required for discipline or removal of employees serving their initial hire probation.

It is undisputed that the Grievant, at the time of his discharge, was a permanent County employee. Accordingly, the Employer must have "just cause" to terminate his employment with the County as a Deputy.

It is generally the function of an arbitrator in interpreting a contract provision which requires "cause" as a condition precedent to discharge not only to determine whether the involved employee is guilty of the wrongdoing as charged by the employer, but also to safeguard the interests of the

discharged employee by making reasonably sure that the cause for discharge was just and equitable. The term "just cause" implies a standard of reasonableness under the unique circumstances of each case. An employee will not be discharged by action which is deemed by an arbitrator to be arbitrary, capricious, discriminatory, unduly harsh, or disproportionate to the proven offense committed by that employee.

Discharge is, to the employee, tantamount to "economic murder." The seriousness of the discharge is particularly distressing for an employee like the Grievant who has invested a substantial amount of time (approximately 10 years as a Deputy) with the Employer. For this reason, it is the overwhelmingly accepted principle that the burden of proof in discharge cases is on the employer, which in this case is the County.

There are generally two areas of proof involving the discipline of an employee. The first involves proof by the employer of actual employee wrongdoing. The second area of proof, once actual wrongdoing is established, is the propriety of the penalty assessed by the employer.

The Grievant was terminated by the County on July 18, 2017 for allegedly failing to generate reports in a timely manner, failing to properly handle evidence, failing to file search warrants in a timely manner, falsifying documents by copying Judge's signatures onto search warrants filed with the Court,

making untruthful statements to the BCA investigator during a criminal investigation, and knowingly providing false information to a superior.

The record establishes that the Grievant is guilty of failing to generate reports in a timely manner since 43 of the 71 cases that had been assigned to him since he was assigned to the VOTF were missing a portion or all of their reports.

When confronted by supervision, the Grievant indicated the missing reports were in various stages of completion and were stored on external storage devices. The Grievant was given several days in which to complete the missing reports. Three days later, the Grievant provided to Lieutenant Patterson, his County Sheriff's Office direct supervisor, an electronic copy of the majority of the reports from the 43 delinquent cases. It was noted that all of them were stamped with created dates that ranged between August 19-22, 2016. This appeared to contradict the Grievant's assertion that these reports were previously initiated and stored on another external storage device.

Lieutenant Patterson later met the Grievant again and asked him where he had located the reports that had been completed and submitted to her. The Grievant told Lieutenant Patterson that he had located these reports on a removable hard drive, copied the text from these files, pasted the text into the files that were submitted to Lieutenant Patterson on August 22, 2016, and

then deleted the files on the hard drive. Lieutenant Patterson requested that the Grievant provide this external hard drive to her. The Grievant did provide an external hard drive to Lieutenant Patterson advising her that this was the device upon which the reports were previously located. A forensic examination of this hard drive was completed which indicated that no such files ever existed on this hard drive.

The Grievant admitted during his internal investigation interview and his testimony at the arbitration hearing that he knew the hard drive he gave to Lieutenant Patterson did not ever contain report files. The Grievant stated that he had lost the external storage device that had contained these files and that he was embarrassed and did not wish for his supervisor to know of his carelessness. The Grievant admits that his action in this regard was ill-advised and was not an instance of attempting to intentionally mislead Lieutenant Patterson, but an attempt to buy additional time to locate the source, which was never found. Nevertheless, the Grievant is guilty of lying to his supervisor, a very serious violation of County Sheriff's Office Policies.

The Grievant is also guilty of failing to properly handle evidence. In one case, the Grievant was assigned to deliver firearms seized in a search warrant from the St. Cloud Police Property Room to the BCA and a DNA sample from the suspect to

the BCA crime lab. Even though the Grievant had assured his supervisor that these tasks were successfully completed, it was later learned that the firearms in question had not been transferred and the DNA sample was lost.

In addition, while looking through the Grievant's desk following his placement on administrative leave, supervisors found several cell phones, some of which were tagged as evidence, in a binder under the Grievant's desk. Supervisors also discovered that eight cell phones listed as being seized from a residence on a search warrant were currently unaccounted for. During the search warrant that yielded these eight cell phones, the possession of this evidence was transferred last to the Grievant.

Finally, an audit of the County Property Room found two cases in which the Grievant brought property into the evidence room but failed to log it into the computer system.

In his internal investigation interview and during his testimony at the arbitration hearing, the Grievant admitted to failing to follow proper evidence handling protocols "sometimes" and that it was "not uncommon" for him to store a phone held as evidence in his desk.

The record discloses that the Grievant is guilty of failing to file search warrants in a timely manner, one of the grounds for the Grievant's termination. After the Grievant was notified

of the numerous missing reports, he brought several search warrants to Benton County Court Administration for filing. These irregularities were a concern of the Benton County Court Administration staff so they contacted Lieutenant Patterson. In reviewing these search warrant filings and their irregularities, it was discovered that the Grievant had neglected to file 13 search warrants with the Court in a timely manner. Some of these search warrants were filed months or years after the execution of the warrant.

Another reason proffered by the County to justify the Grievant's discharge was the allegation that he falsified documents by copying Judge's signatures onto search warrants filed with the Court.

While reviewing the search warrants filed by the Grievant outside of the normally proscribed time limits, it was discovered that he had filed the same search warrant on two separate occasions for the same address in 2014 and then again in 2016. In examining these two documents, it was found that the page containing Judge Jesse's signature on the first filing of the warrant was different than the page containing Judge Jesse's signature on the second filing of this same warrant. An additional search warrant was located wherein Judge Jesse's signature on the affidavit page and on the warrant page appeared to be exact copies of each other.



Upon learning of this relevant information, the case was referred to the BCA for the investigation of possible criminal charges for filing a forged document with the Court. As a part of this criminal investigation, four of the questioned search warrants filed by the Grievant were sent to a forensic document examiner. The examiner noted that the signatures on the search warrant filed by the Grievant on October 4, 2014 contained original inked signatures. The examination revealed that the copy of this same search warrant at the same address filed by the Grievant on September 27, 2016 contained signatures made from toner rather than ink by use of a scanner or copying machine.

Another search warrant obtained by the Grievant on September 5, 2014 to search an address in Foley, Minnesota was examined. This search warrant was filed by the Grievant on September 27, 2016. The examiner found evidence that the two Judge Jesse's signatures on this search warrant were copies of the Judge's signature from the search warrant for another address filed on October 4, 2014.

In the criminal investigation interview with the BCA, SSA Newhouse stated that the Grievant told him that the Grievant did not copy or write Judge Jesse's signatures on the search warrants in question. The Grievant, on the other hand, testified at the arbitration hearing that when SSA Newhouse

asked him at the criminal investigation interview whether he had forged Judge Jesse's signature on the warrants, the Grievant responded that he had not. The Employer claims that the Grievant lied in his response to SSA Newhouse, which was another reason for his termination. In any event, after being shown the similarities on these search warrants, which suggested serious criminal acts against him, the Grievant exercised his legal right to request an attorney.

The Grievant's explanation, during his internal investigation interview and his testimony at the arbitration hearing, as to why he copied Judge Jesse's signature on the warrants in question is that when he discovered that he had several search warrants which had not been filed in a timely manner, he worked to organize the paper work he had in order to file these documents. The Grievant stated that some of these documents were in his desk area, while others were in a bin in his VOTF truck that had stuck together or stained. The Grievant stated that he attempted to make these documents appear to be original by running them through a copying machine, manipulating the settings in order to remove the evidence of improper handling or printing new copies of the original document. The Grievant stated that he then used a copying machine to duplicate Judge Jesse's signatures to make the documents appear to be original.

Once SSA Newhouse completed his criminal investigation interview with the Grievant, the matter pertaining to the multiple cases for which the Grievant was responsible, but did not have corresponding reports or other relevant documents appropriately completed, including copying Judge Jesse's signature on the warrants were submitted for review of possible criminal charges to the Anoka County Attorney's Office. The matter was properly submitted to the Anoka County Attorney's Office to avoid any possible conflict of interest with any of the cities and counties that comprise VOFT.

Rather than finding criminal activity on the part of the Grievant, as hoped by the County in order to enhance their position as to possible discipline, including the Grievant's termination, Assistant Anoka County Attorney Young opined that the Grievant's actions were "created by a combination of poor investigative practices and skills, coupled with poor Task Force oversight or supervision of the work done by investigators." In addition, Assistant Anoka County Attorney Young sides with the Grievant when he concluded:

It is critical to this analysis that the original warrants from 2014 were, at the time signed by a judge. Therefore, no unauthorized warrants were executed on citizens. Here, rather than with an intent to commit a crime, or defraud the court, Haas appears to have altered the damaged or missing judicial signatures from the already approved warrant to ensure his (Haas') ability to return/file the warrants with court - albeit 2 years, later. Haas exercised very poor judgment in attempts to correct very

poor management of search warrants. But, the State cannot prove beyond a reasonable doubt that the conduct of Haas is criminal.

(Employer Exhibit #1, Tab 12).

It is also significant to note that Judge Jesse never prepared a statement or testified at any formal or informal interview or at the arbitration hearing denouncing the actions of the Grievant with regard to the warrants. Most certainly, one would have expected a negative response from Judge Jesse if he believed that there was wrongdoing by the Grievant as to the warrants.

Clearly, the Grievant's actions in these regards may have been a lapse in personal judgment and the Grievant probably should have consulted with his supervisors on how to handle the matters, but no member of the public was negatively impacted and the Grievant committed no crime.

As to the Employer's claim that the Grievant was dishonest and lied during the criminal investigation interview with SSA Newhouse is inconclusive at best. There are credibility issues concerning the questions being asked of the Grievant by SSA Newhouse and the statements made by the Grievant and what those statements intended. SSA Newhouse claims that he asked the Grievant the question of whether the Grievant copied or signed Judge Jesse's name to any of the warrants. The County suggests that the Grievant's answer to the question was dishonest in

denying "copying or writing" Judge Jesse's signature on the warrants. The Grievant explained that in context he understood SSA Newhouse's question as to whether he had forged Judge Jesse's signature and his response that he had not was truthful.

Unfortunately, SSA Newhouse's recorder did not work so no transcript of the interview is available. The failure to record the interview was not the fault of the Grievant and without the ability to listen to the interview in context it is unfair to interpret SSA Newhouse's interpretation against the Grievant.

In Giglio v. U.S., 405 U.S. 150 (1972), the United States Supreme Court overturned a conviction due to the prosecutor failing to disclose to defense counsel an offer of leniency made to a prosecution witness. The Supreme Court held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony was a failure to fulfill the duty to present all material evidence to the jury, and constituted a violation of due process, requiring a new trial. This holding is based on the obligation under Brady v. Maryland, 373 U. S. 83 (1963) to disclose to defense counsel all exculpatory information.

Giglio issues relate to the obligation of a prosecutor to disclose to a criminal defense lawyer/defendant relevant information relating to the credibility, bias or impairment

of any of their witnesses, obviously including law enforcement officers. Typically, Giglio issues arise for law enforcement officers when they have been accused of some form of dishonesty while performing their law enforcement duties. When law enforcement officers are accused of being untruthful, it could have a significant impact on their careers.

It should be noted, however, that even if law enforcement officers have been untruthful in the past, which impacts their credibility, this does not automatically disqualify them from testifying in court. A Giglio issue may need to be disclosed to the defense counsel, but that does not preclude law enforcement officers from testifying.

The County relies on the opinion of County Attorney Miller that it would be unlikely to bring charges in any new case in which the Grievant was involved because of the damage which has been inflicted on the Grievant's credibility. County Attorney Miller also opined that the Grievant has done such damage to his credibility that he could not be called to testify in any future proceedings involving the County and the Grievant. In other words, County Attorney Miller claims that the Grievant is Giglio-impaired.

Clearly, just cause for a discharge cannot be automatically established by the County claiming credibility issues. County Attorney Miller's opinion assumed that the Grievant would be

found guilty of being dishonest in several instances, which were the grounds for his discharge. The record has proved otherwise. The record does not show a pattern of dishonesty on the part of the Grievant. This has been no convincing evidence that the Grievant was dishonest in an official report or in any manner which would affect the rights of a suspect or any member of the public. Likewise, the missing guns/DNA issue does not reflect dishonesty, but inefficiency on the part of the Grievant. Turning to the alteration of warrants, there was no proven dishonesty as the Grievant's actions did not result in any unauthorized warrant being served on a citizen and the Assistant Anoka County Attorney found no crime had been committed. This was another matter of inefficiency on the part of the Grievant in failing to maintain and timely file the warrants, not an instance of dishonesty.

The only proven dishonesty on the part of the Grievant is that he lied to Lieutenant Patterson that he had the missing reports stored on external devices. This might be the only instance of dishonesty that could be used to impeach the Grievant's testimony. Other than this occasion, there is no convincing evidence that the Grievant lied to any of his superiors about any other aspect of the missing reports or missing items during an investigative interview. Moreover, there was no convincing proof that the Grievant lied to SSA

Newhouse in a criminal investigation, which would be far more serious than simply lying to a supervisor in a conversation while performing his work duties.

While lying to anyone is never an accepted practice in the workplace, the Grievant's lying to his superior in a non-investigative setting is a violation of County Sheriff's Office Policies and a punishable offense, but there is no convincing argument that this isolated lying incident would make the Grievant Giglio-impaired and unable to testify credibly on behalf of the County. Even if a court were to conclude this incident could be used in effort to impeach the Grievant's testimony in a criminal proceeding, it is entirely speculative whether a defense would attempt to do so, especially since the Grievant claims that he lied as a face-saving effort to buy additional time in which to locate the actual hard drive. Many jurors or a judge might well be aware of individuals who have lied to a work supervisor to avoid embarrassment. Therefore, the County's argument that there is no role that the Grievant could be used in and continued employment is not a possibility has not been proven by the evidence.

In the final analysis, there can be no dispute that certain of the Grievant's actions were ill-advised and reflect poor judgment and warrant the imposition of some level of discipline, particularly with respect to the failure to timely file warrants



and alteration of the warrants and providing Lieutenant Patterson with the wrong hard drive and lying about its whereabouts. Clearly, the Grievant was over-his-head, working in an environment for which he was not well suited when he remained in the VOFT assignment. The Grievant had poor organizational skills, had lapses in concentration and had difficulty keeping up with the demands of the VOTF assignment, which led him to fall behind on work and forget or fail to complete tasks. His issues in this regard were the result of attention deficit challenges and changes in his personal life. However, the fact that the Grievant may have been suffering from attention deficit challenges and changes in his personal life does not act as a bar from him being disciplined for his misconduct. The Grievant is still accountable for his actions.

While performing law enforcement duties as a County Deputy, the Grievant had good to excellent job performance evaluations and also received numerous accolades for good performance in a variety of contexts. The Grievant explained that he was able to perform successfully in a Deputy role in part due to supervision he received in that job. There is no reason to believe that the Grievant would not provide similarly outstanding performance if he is reinstated to the position of a County Deputy.

Clearly, the Grievant's actions cannot be condoned by the Arbitrator but, at the same time, the County's punishment of

discharge is unwarranted and not for just cause. To discharge the Grievant in light of the unique facts and circumstances surrounding this case would be excessive. The appropriate remedy is reinstatement with no back pay. The degree of penalty assessed by the Arbitrator in the instant grievance is commensurate with the seriousness of the offenses committed by the Grievant and his overall work record.

**AWARD**

Based upon the foregoing and the entire record, the grievance is sustained in part. Within thirty (30) days of the receipt of this Award the County shall reinstate the Grievant, Chad Haas, to his former Deputy position without any back pay. The effective date of his termination to his date of his reinstatement shall be construed as a disciplinary suspension without any back pay. The County shall credit the Grievant with all contractual benefits, if any, that are accorded an employee who has served a disciplinary suspension without pay.

**Richard J. Miller**

Dated October 12, 2018, at Maple Grove, Minnesota.